

1989

Chris\' Body & Paint, Inc., Bryan Christensen v.  
State Farm Mutual Insurance Co., Leon Maxwell :  
Brief of Appellant

Utah Court of Appeals

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Randall W. Richards; Richards, Caine & Allen; Attorney for Plaintiff.

Glenn C. Hanni; Attorney for Defendants.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

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|                              |   |                    |
|------------------------------|---|--------------------|
| CHRIS' BODY & PAINT, INC., a | ) |                    |
| Utah corporation and BRYAN   | ) |                    |
| CHRISTENSEN,                 | ) | BRIEF OF APPELLANT |
| Plaintiff/Appellant          | ) |                    |
| vs.                          | ) | Case No. 890540-CA |
| STATE FARM MUTUAL INSURANCE  | ) | Priority:          |
| CO. and LEON MAXWELL,        | ) |                    |
| Defendant/Respondent.        | ) |                    |

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APPELLANT'S BRIEF ON APPEAL

---

AN APPEAL FROM A JUDGMENT OF THE  
SECOND JUDICIAL DISTRICT COURT OF SALT LAKE  
COUNTY, STATE OF UTAH, HONORABLE JAMES S.  
SAWAYA PRESIDING.

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DEPOSITED BY THE  
STATE OF UTAH  
AUG 20 1990

GLENN C. HANNI  
Attorney for Defendant  
6th Floor Boston Bldg.  
Salt Lake City, Utah 84111

RANDALL W. RICHARDS of  
RICHARDS, CAINE & ALLEN  
Attorney for Plaintiff  
2568 Washington Blvd.  
Ogden, Utah 84401

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

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GLENN C. HANNI  
Attorney for Defendant  
6th Floor Boston Bldg.  
Salt Lake City, Utah 84111

RANDALL W. RICHARDS of  
RICHARDS, CAINE & ALLEN  
Attorney for Plaintiff  
2568 Washington Blvd.  
Ogden, Utah 84401

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RANDALL W. RICHARDS, #4503  
RICHARDS, CAINE & ALLEN  
Attorney for Plaintiff  
2568 Washington Boulevard  
Ogden, Utah 84401  
Telephone: 399-4191

IN THE UTAH COURT OF APPEALS

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|                              |   |                     |
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| CHRIS' BODY & PAINT, INC.    | ) |                     |
| a Utah corporation and BRYAN | ) |                     |
| CHRISTENSEN,                 | ) | BRIEF OF APPELLANT  |
| Plaintiffs/appellant,        | ) |                     |
| vs.                          | ) |                     |
| STATE FARM MUTUAL INSURANCE  | ) |                     |
| COMPANY and LEON MAXWELL,    | ) |                     |
| Defendant/respondent.        | ) | Civil No. 890540-CA |

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JURISDICTION

Jurisdiction is granted in this Court pursuant to Utah Code Annotated (1953 as amended) Section 78-2a-2j and Rule 4A of Rules of the Utah Court of Appeals. This case was originally filed in the Utah Supreme Court and was transferred, at the discretion of the Supreme Court, to the Utah Court of Appeals.

STATEMENT OF CASE

This is an appeal from a Judgment entered against plaintiff/appellant Chris' Body & Paint, Inc., a Utah Corporation and Bryan Christensen in favor of defendant/respondent State Farm Mutual Insurance Co. and Leon Maxwell. This Judgment was entered, pursuant to a defendant/respondent's Motion for Summary Judgment, by the Honorable James S. Sawaya in the Third Judicial District Court in and for the county of Salt Lake, State of Utah.

### STATEMENT OF ISSUES PRESENTED ON APPEAL

1. The trial Court erred in granting Summary Judgment with regards to the claim of defamation.
2. The trial court erred in granting Summary Judgment with regards to the Claim of tortious interference with prospective business relations.

### CONSTITUTIONAL PROVISION, STATUTES, AND ORDINANCES

Rule 56(c) of the Utah Rules of Civil Procedure.

Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

UCA Section 45-2-3(3)

"In a communication, without malice to a person interested therein by one who is also interested or by one who stands in relation to the person interested as to afford a reasonable ground for supposing mode for communication innocent or who is requested by the person interested to give the information shall fall within the privilege designated by statute and therefore not be libelous or slanderous per se".

### STATEMENT OF FACTS

1. On or about the 19th day of November, 1987 plaintiffs by and through their attorney Randall W. Richards filed a Complaint in the above entitled action. This Complaint among other things alleged:

- a. That the defendants had established and carried out a

continuous and willful plan of defamation of plaintiff.  
(Complaint paragraph 15)

b. That defendants had told customers and potential customers of plaintiff, that plaintiff did inferior work, charges excess for the work, were dishonest in their business dealings, and that plaintiff's shop should be avoided. (Complaint paragraph 16)

c. That defendants consistently and maliciously told customers or prospective customers of plaintiff that plaintiff did inferior work and engaged in dishonest and deceptive business practices and charged more than they should for body work. (See paragraph 25 of Complaint)

d. Plaintiff's further allege that the actions of the defendants constituted tortious interference with prospective business relations. (Complaint paragraph 26)

e. Plaintiff's allege that the defamatory statements as well as the tortious interference have resulted in special and general damages in varying amounts. (Paragraphs 17, 18, 19, 27, 28 and 29 of plaintiff's Complaint)

2. Bryan Christensen and Chris' Body & Paint, Inc. have, since its opening in 1976, conducted business with State Farm. (Bryan Christensen Deposition, Vol. 1 pg. 12)

3. In charging State Farm, as well as other customers, Chris' Body & Paint, Inc. utilizes Mitchell Manual and other estimating guide line books for pricing the repairs. (Bryan Christensen Deposition, Vol. 1 Pg.21)



4. Chris' Body & Paint ordinarily accepts estimates or appraisals done by State Farm. (Bryan Christensen Deposition, Vo. 1 Pg. 23-24)

5. Chris' Body & Paint, Inc. on occasion does not accept State Farm estimates. They are not accepted in the instances where there have been one or more items missed and in those instances, they call for reinspection from the State Farm appraiser. (Bryan Christensen Deposition, Vol. 1 Pg. 24, 27-28)

6. Since Chris' Body Shop has been in business, they have never refused to work off one of State Farm's estimates. (Bryan Christensen Deposition, Vol. 2 Pg. 75-76)

7. In regards to mechanical work, Chris' Body Shop performs and has agreed to perform mechanical work at below the prevailing rate for mechanic shops. (Bryan Christensen Deposition, Vol. 2 Pg. 76-78)

8. With regards to frame work, Bryan Christensen accepts State Farm's estimates on the frame work regardless of what State Farm decides to pay on that work. (Bryan Christensen Deposition, Vol. 2 Pg. 85)

9. State Farm has been treating Chris' Body Shop differently than they treat any other automobile body repair shop in town and by so doing have been discouraging customers from having work done at Chris' Body & Paint, Inc. (Bryan Christensen Deposition, Vo. 2 Pg. 94-95)

10. That although plaintiffs at times utilized used or repaired parts while charging insurers, including State Farm, for

new parts, these actions were done only at the instruction and with the full understanding of the customers (insureds) for whom plaintiffs were working. (Bryan Christensen Deposition, Vol. 3 Pg. 186-189)

11. Defendant/respondent, State Farm, through its employees and Leon Maxwell, as an employee of State Farm as well as individually, have defamed plaintiffs by saying that plaintiffs were dishonest, did inferior work, were crooks and cheated their customers. (See Affidavits of Rob Nelson, Bryan Lund and Brent Buehler)

13. After numerous depositions and other discovery the defendants made a Motion For Summary Judgment and the hearing on that Motion was held on the 22nd of May, 1989 before the honorable James S. Sawaya.

14. In response to the Motion for Summary Judgment, plaintiff submitted additional affidavits of Rob Nelson, Bryan Lund, and Brent Buehler in opposition of Defendant's Motion for Summary Judgment. Copies of these affidavits are attached in the Addendum. (Affidavit of Bryan Lund, Record Pg. 116 - 118, Affidavit of Rob Nelson, Record Pg. 140 - 142, Affidavit of Brent Buehler, Record Pg. 113 - 115)

15. In his Affidavit, Bryan Lund stated that the defendant State Farm or employees thereof told him that Chris' did inferior work, had a high number of dissatisfied customers, and implied that Chris' Body Shop was dishonest and that Chris' Body would cheat on the work they did. State Farm further told Mr. Lund

that Chris' Body would not honor State Farm's bid and that they did not want him going to Chris' Body to have his work done. (See Affidavit of Bryan Lund, Record Pg. 116 - 118)

16. In Rob Nelson's Affidavit, he stated that the defendant told him that Chris' Body charged more for work than it was worth, that they did inferior work, that they were dishonest and sneaky in regards to their business dealings and that he could not take his car to Chris' Body Shop and have it paid for by State Farm. (Affidavit of Rob Nelson, Record Pg. 140 - 142)

17. In his Affidavit, Brent Buehler states that defendants told him that plaintiffs charged more for work than it was worth, that they were unfair with their customers and cheated on repairs, that they charged more for their work than other body shops in the valley and that State Farm insisted that he have his car repaired at a shop other than Chris' Body Shop. (Affidavit of Brent Buehler, Record Pg. 113 - 115)

## SUMMARY OF ARGUMENT

### POINT I

On appeal from Summary Judgment the Appeal Court is to review evidence in light most favorable to the losing party, in this instance, the plaintiff. If there is any evidence in the form of deposition, affidavits, etc. that shows the existence of a genuine issue of material fact it is reversible error to grant Summary Judgment. The Trial Court, in the present case, erred in granting Summary Judgment on the basis that plaintiffs raised, through affidavits and deposition testimony, a great deal of

evidence that established a genuine issue of material fact regarding the defamation claim.

## POINT II

On appeal from Summary Judgment the Appeal Court is to review evidence in light most favorable to the losing party. In the present case the Trial Court erred in granting Summary Judgment on the basis that plaintiffs raised, through affidavits and deposition testimony, a great deal of evidence that established a genuine issue of material fact regarding the tortious interference with prospective business relations claim.

## ARGUMENT

### POINT I

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WITH REGARDS TO PLAINTIFF'S CLAIM OF DEFAMATION

Rule 56(c) of the Utah Rules of Civil Procedure provides that a Motion of Summary Judgment shall be

"rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to Judgment as a matter of law."

The Courts have interpreted literally the wording "genuine issue as to any material fact" and have routinely established that it's the moving party's burden to show the lack of any material issue of fact. The Supreme Court in the recent case of Geneva Pipe Co. vs. S & H Insurance Co., 714 P.2d 648, 649 (Utah 1986) held "on appeal from a Summary Judgment, we review the evidence in light most favorable to the losing party" In the

Geneva Pipe Company case the Court held that granting of Summary Judgment was improper based upon the fact that one affidavit established evidence of a genuine issue of a material fact. This same position was repeated in the case of Ceco vs. Concrete Specialists, Inc., 772 P.2d 967, 969 (Utah 1989) wherein the Court held

"a grant of Summary Judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to Judgment as a matter of law."

The Court, in Ceco went on to hold,

"and in deciding whether the trial court properly granted Judgment as a matter of law to the prevailing party, we give no deference to the trial court's view of the law, we review it for its correctness." (Id at 969)

In the present case, the plaintiffs filed a Complaint with one of its causes of actions being defamation. Plaintiffs have alleged that "defendants have established and carried out a continuous plan of defamation of plaintiff, Bryan Christensen and Chris' Body & Paint Inc." (See Complaint, Para. 15) This defamation included telling customers and potential customers that plaintiffs did inferior work, that plaintiffs charged excessive amounts for the work they did, that plaintiffs were dishonest, that plaintiffs were crooks and that plaintiffs' shop should be avoided and other shops were better automobile body repair shops. As a result of this defamation, plaintiffs allege that they have sustained irreparable damage to their reputation which has affected their business.

While plaintiffs recognize that under Utah Code Annotated Sections 45-2-3(3) certain communications are privileged, plaintiffs contend that the those communications alleged in the Complaint which plaintiffs intend to prove at the time of trial, do not fall within that parameters of said privilege. Section 45-2-3(3) provides certain privileges in a defamation action which, in relevant part, is as follows:

"In a communication, without malice to a person interested therein by one who is also interested or by one who stands in relation to the person interested as to afford a reasonable ground for supposing mode for communication innocent or who is requested by the person interested to give the information shall fall within the privilege designated by statute and therefore not be libelous or slanderous per se".  
(emphasis added)

In paragraph 15 of plaintiffs' Complaint, plaintiffs allege that, "defendants have established and carried out a continuous and willful plan of defamation of plaintiff Bryan Christensen and plaintiff Chris' Body & Paint, Inc. Furthermore, later in the Complaint, in paragraph 25, plaintiffs have alleged,

"that defendants have consistently and maliciously told customers, prospective customers of Chris Body & Paint, Inc. that Chris' Body & Paint, Inc. was an inferior automobile repair shop, that Chris' Body & Paint, Inc. engaged in dishonest or deceptive practices, that Chris' Body & Paint, Inc. routinely charged more that they should for automobile repair services which they perform and, that customers of Chris' Body & Paint, Inc. should go elsewhere to have their body repair work done."

Plaintiffs have established, through the deposition of Bryan Christensen as well as through the Affidavits of Lund, Nelson, and Buehler, that defendants carried out a continuous willful and

malicious plan of defaming plaintiffs and that as a result of such defamation, plaintiffs have been damaged through a loss of business and through general loss of reputation in the business community and the community at large.

Defendants further recognize that, in certain instances, general claims of dishonesty or being a crook are not actionable, however, in the case of Prince v. Peterson, 538 P.2d 1325, (Utah 1975), the Utah Supreme Court recognized the actionability of allegations of dishonesty or criminality. In the Prince decision, the Supreme Court upheld a verdict based upon the following defamatory statements made by defendants:

"calling the plaintiff names including he was a clever crook, etc. who was stealing from his own children, referring to the operation of a business and his efforts to sell it."  
(Id at 1328)

In affirming the jury's verdict, the Court held,

"we have no disagreement with the defendant's contention that simply making some general statements about another being a crook or even using profanity in a general way may not be actionable slander. It may well depend on the circumstances. If words of that character are used in such a context or under such circumstances as they would reasonably be understood to come within the traditional requirement of liable or slander, that is to hold a person up to hatred, contempt or ridicule or to injure him in his business or vocation, they are deemed actionable per se; and the law presumes that damage will be suffered therefrom."

Plaintiffs have made ample assertions that defendants have, on numerous occasions to prospective customers, made defamatory statements which include imputations as to plaintiffs' honesty in his business dealings and generally. Furthermore, plaintiffs

have claimed, and logic would establish that said defamatory statements have hurt their business. The affidavit of Brent Buehler, among other things, establishes this loss of business. Paragraph 17 of plaintiffs' Complaint states:

"that a direct result of the defamation of plaintiffs by the above named defendants, that plaintiffs have suffered monetary damages in an amount in excess of \$50,000 in terms of lost jobs and lost customers."

Furthermore, the allegations of dishonesty were made by defendants in the general course of discouraging potential customers from doing business with the plaintiffs. There is no question that allegations of dishonesty or allegations of being a crook were made in the context of and in furtherance of defendant's attempt to discourage customers from patronizing plaintiff's business.

## POINT II

PLAINTIFFS HAVE ESTABLISHED A CLAIM FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

The Utah Supreme Court, in the case of Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 established the elements necessary to establish a claim of tortious interference with prospective business relations as follows:

1. That defendant intentionally interfered with the plaintiffs' existing or potential economic relations.
2. For an improper purpose or by improper means.
3. Causing injury to plaintiff.

The plaintiffs have made various allegations and evidence gathered via the deposition of plaintiff as well as the



Affidavits of Lund, Nelson, Buehler establish that defendants interfered with prospective economic relations between the plaintiffs and various automobile owners desiring to have automobile body repair work done. The plaintiffs have outlined no less than twenty (20) such instances and in the deposition of Bryan Christensen. Plaintiffs further allege that there are others unknown and undiscoverable with whom defendants have interfered. The Supreme Court, in the case of Leigh Furniture, established the requirements to prove tortious interference as cited above. The Court went through an exhaustive analysis of improper purpose and made the following factual determination in that case as follows:

"Taken in isolation each of the foregoing interference with Isom's business might be justified as an overly zealous attempt to protect the Corporation's interest under its contract of sale.

. . . .

But in total and in cumulative effect, as a course of action extending over a period of three and one-half years and culminating in the failure of Isom's business, the Leigh corporation's acts cross a threshold beyond what is incidental and justifiable to what is tortious." (Id at 306)

The case of Top Serv. Body Shop, Inc. v. Allstate Ins. Co., 582 P.2d 1365 (Oregon 1978) addressed a factual situation which in some respects is similar to the case at hand. The Court, in Top Serv. Body Shop, Inc., although supporting the jury verdict of no cause, stated that a jury could have inferred improper purpose in defendant's conduct, but in this particular instance, such an inference was not supported by the evidence on record.

The Utah Supreme Court, in the Leigh Furniture case held that defendant's could prove, in the alternative, either improper purpose and/or improper means. In defining improper means the Court stated as follows:

"The alternative requirement of improper means is satisfied where the means used to interfere with a party's economic relations are contrary to law such as violations of statutes, regulations, or recognized common law rules. Such acts are illegal or tortious in themselves and thence are clearly improper means of interference.

. . . .

Commonly included among improper means are violence, threats or intimidation, deceit or misrepresentation, bribery, unfounded litigation, defamation or disparaging falsehood." (Id @ 308 emphasis added)

The Court of Appeals of Utah has issued the most recent Utah decision regarding tortious interference of prospective business relations in the case of Sampson v. Richins 770 P.2d 998 (Utah App. 1989). In the Sampson decision this Court followed Leigh Furniture in holding that:

"The improper means element is satisfied where the means used to interfere with a party's economic relations are contrary to law, such as violations of statutes regulations or recognized common law rules. Such acts are illegal or tortious in themselves and hence are clearly improper means of interference. Leigh Furniture 657 P.2d 308 (Citations omitted) Improper means may also included violence, threats, or other intimidation, deceit, or misrepresentation, bribery, unfounded litigation, defamation, or disparaging falsehood. Id ("In Top Serv. Body Shop Inc. 582 P.2d 1371). "Means may also be improper or wrongful because they violated an established standard of trade or profession."

The Court, in Sampson, then held as improper means a list of thirteen violations established during the trial which thirteen

include, among others, misrepresentation, false statements and breach of agreement. (Id at 1004)

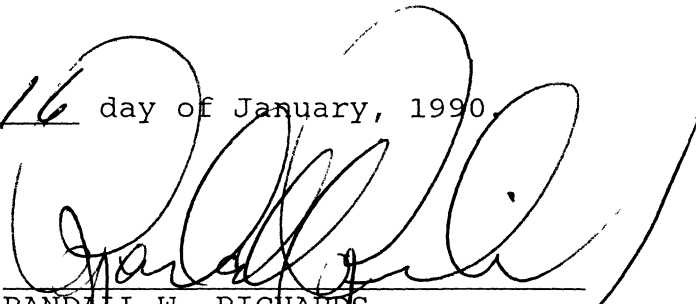
In the present case the plaintiffs have alleged and established by affidavits and depositions each of the three elements required under Leigh Furniture and Sampson v. Richins. The potential interference with plaintiff's existing or potential economic relations is clearly established by the affidavits of Lund, Nelson, and particularly Buehler who, due to defendant's actions, was persuaded to take his vehicle to have it repaired elsewhere. The defendants further established, through deposition of Bryan Christensen, evidence to show that there was an improper purpose in taking these actions and both through depositions and through affidavits of Lund, Nelson, and Buehler that improper means were employed, which means included threats, intimidation, misrepresentation, defamation and disparaging falsehoods. Finally, the injury to plaintiffs is clearly established through deposition of Bryan Christensen wherein he demonstrated, in hard number figures, the decline of his business which he alleges was as a direct result of defendant's actions in this case.

#### CONCLUSION

Based upon the foregoing, plaintiffs respectfully submit that the Trial Court acted improperly in granting defendant's Motion for Summary Judgment on the issues of defamation and tortious interference with plaintiff's prospective business relations. The plaintiff in this case has established through

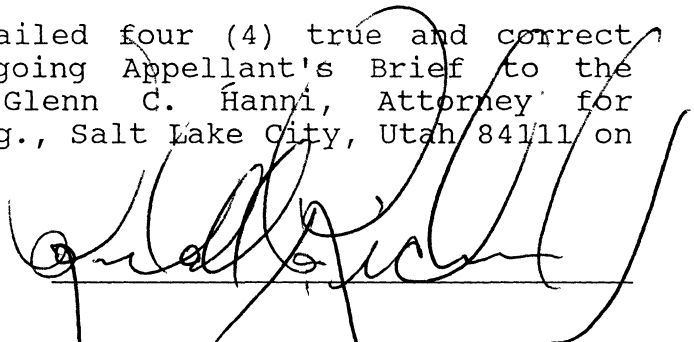
depositions and affidavits the existence of genuine issues of material fact and as a matter of law the Court was improper in granting the Motion for Summary Judgment. Therefore, plaintiffs request that this Court reverse the Summary Judgment and allow this matter to be brought to trial.

RESPECTFULLY SUBMITTED this 16 day of January, 1990.

  
\_\_\_\_\_  
RANDALL W. RICHARDS  
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed four (4) true and correct copies of the above and foregoing Appellant's Brief to the counsel for the Respondent, Glenn C. Hanni, Attorney for Respondent, 6th Floor Boston Bldg., Salt Lake City, Utah 84111 on this 16 day of January, 1990.

  
\_\_\_\_\_  
[Signature]

JUN 12 1989

GLENN C. HANNI, #A1327  
STEPHEN J. TRAYNER, #4928  
STRONG & HANNI  
Attorneys for Defendants  
Sixth Floor Boston Building  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7080

SALT LAKE COUNTY  
By James S. Sawaya  
Clerk

---

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

---

CHRIS' BODY & PAINT, INC.,                    )  
a Utah corporation and  
BRYAN CHRISTENSEN,                                )

Plaintiffs,                                        )

vs.    )

STATE FARM MUTUAL INSURANCE                    )  
COMPANY and LEON MAXWELL,                        )

Defendants.    )

---

J U D G M E N T

Civil No. C-87-7726

Defendants' Motion for Summary Judgment came on for hearing before the Honorable James S. Sawaya on May 22, 1989. Plaintiffs were represented by their attorney, Randall W. Richards. Defendants were represented by their attorneys, Glenn C. Hanni and Stephen J. Trayner. The court heard arguments of counsel, and having made and entered its Memorandum Decision, and being fully advised,

IT IS ORDERED, ADJUDGED AND DECREED:

1. Defendants' Motion for Summary Judgment on all claims of plaintiffs is hereby granted, and judgment is hereby entered in favor of defendants and against plaintiffs, no cause of action.

Dated this 12 day of June, 1989.

BY THE COURT:

  
\_\_\_\_\_  
J U D G E

MAILING CERTIFICATE

I hereby certify that on the 5th day of June, 1989, I mailed a true and correct copy of the foregoing Judgment, first-class postage prepaid, to:

Randall W. Richards  
Attorney for Plaintiffs  
2568 Washington Blvd.  
Ogden, Utah 84401

\_\_\_\_\_

RANDALL W. RICHARDS, #4503  
RICHARDS, CAINE & ALLEN  
Attorney for Plaintiff  
2568 Washington Boulevard  
Ogden, Utah 84401  
Telephone: (801) 399-4191

IN THE SECOND JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

|  |                         |
|--|-------------------------|
| CHRIS' BODY & PAINT, INC., a )<br>Utah corporation and BRYAN )<br>CHRISTENSEN, ) | AFFIDAVIT OF BRYAN LUND |
| Plaintiffs, )  | Judge: James S. Sawaya  |
| vs. )  |                         |
| STATE FARM MUTUAL INSURANCE )<br>CO. and LEON MAXWELL, )                         |                         |
| Defendants. )  | Civil No. C87-7726      |

---

STATE OF UTAH )  
:  
COUNTY OF SALT LAKE )

BRYAN LUND, being first duly sworn upon his oath, deposes  
and states as follows:

1. I am a resident of Salt Lake County, Utah and own a car  
and in the past have had automobile body damage that needed to be  
repaired.

2. On a number of occasions, I have gone to Chris' Body &  
Paint, Inc. for that repair work. They have done, in my  
opinion, superior work on the repairs that they have done and I  
have not had any problems with them in regards to the repair work  
they have done.

3. That on several occasions I have had body repair work done which was insured and covered by State Farm Insurance Company. On one occasion which occurred in the middle of May, 1987, I took my car to the State Farm Offices to have it inspected and informed them that I would be having the work done at Chris' Body & Paint, Inc.

4. When they discovered that I was going to have my work done at Chris' Body & Paint, Inc. the State Farm individual with whom I was dealing made a number of comments with regards to Chris' Body & Paint, Inc. Those comments are as follows:

a. They (State Farm) told me that Chris' Body & Paint, Inc. charged more for the work than it was worth.

b. They (State Farm) told me that they did inferior work and that they charged more than any shop in town for that work.

c. They (State Farm) told me that there were a lot of better shops in the valley that did much better quality work for much less money.

d. They (State Farm) told me that they did not want me to go to Chris' Body & Paint, Inc. and they did everything in their power to discourage me from going there.

e. They (State Farm) told me that Chris' Body & Paint, Inc. had an extremely high number of dissatisfied customers due to the inferior work they did and the high prices they charged.

f. They (State Farm) told me that Chris' Body & Paint, Inc. would not honor the State Farm bids.

g. They (State Farm) implied that Chris' Body & Paint, Inc. was dishonest in their business dealings and implied that



they would cheat me on the automobile body repair work that they did.

Further, your affiant sayeth not.

DATED this \_\_\_\_\_ day of February, 1989.

/S/  
\_\_\_\_\_  
BRYAN LUND, Affiant

SUBSCRIBED AND SWORN to this \_\_\_\_\_ day of February, 1989.

/S/  
\_\_\_\_\_  
NOTARY PUBLIC

Residing At: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

RANDALL W. RICHARDS, #4503  
RICHARDS, CAINE & ALLEN  
Attorney for Plaintiff  
2568 Washington Boulevard  
Ogden, Utah 84401  
Telephone: (801) 399-4191

IN THE SECOND JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

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|  |                            |
|--|----------------------------|
| CHRIS' BODY & PAINT, INC., a )<br>Utah corporation and BRYAN )<br>CHRISTENSEN, ) | AFFIDAVIT OF ROBERT NELSON |
| Plaintiffs, )  | Judge: James S. Sawaya     |
| vs. )  |                            |
| STATE FARM MUTUAL INSURANCE )<br>CO. and LEON MAXWELL, )                         |                            |
| Defendants. )  | Civil No. C87-7726         |

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STATE OF UTAH )  
:  
COUNTY OF SALT LAKE )

ROBERT NELSON, being first duly sworn upon his oath, deposes  
and states as follows:

1. I am a resident of Salt Lake County, Utah and own a car  
and in the past have had an occasion to have automobile body  
repair work done on that automobile.

2. On one occasion, which occurred the first part of  
August, 1987, I had dealings with State Farm Insurance Company  
with regards to repairs on my automobile.

3. On this occasion, I talked to State Farm individuals and  
had my car appraised. After the had the car appraised, I  
informed the State Farm individual that I would be taking the car

to Chris's Body & Paint, Inc. They told me that Chris' Body & Paint, Inc. charged more for the work than it was worth. They told me that they did inferior work.

4. The individual from State Farm told me that Chris' Body & Paint, Inc. was dishonest and sneaky with regards to their business dealings and advised me not to go to Chris' Body & Paint, Inc. to have my automobile body repair work done.

5. When I informed them that notwithstanding their comments, I intended to take car to Chris' Body & Paint, Inc., they informed me that I could not take my car to Chris' Body & Paint, Inc.

Further, your affiant sayeth not.

DATED this \_\_\_\_\_ day of February, 1989.

/s/  
ROBERT NELSON, Affiant

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of February, 1980.

/s/  
NOTARY PUBLIC  
Residing At: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

RANDALL W. RICHARDS, #4503  
RICHARDS, CAINE & ALLEN  
Attorney for Plaintiff  
2568 Washington Boulevard  
Ogden, Utah 84401  
Telephone: (801) 399-4191

IN THE SECOND JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

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|  |                            |
|--|----------------------------|
| CHRIS' BODY & PAINT, INC., a )<br>Utah corporation and BRYAN )<br>CHRISTENSEN, ) | AFFIDAVIT OF BRENT BUEHLER |
| Plaintiffs, )  | Judge: James S. Sawaya     |
| vs. )  |                            |
| STATE FARM MUTUAL INSURANCE )<br>CO. and LEON MAXWELL, )                         |                            |
| Defendants. )  | Civil No. C87-7726         |

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STATE OF UTAH )  
:  
COUNTY OF SALT LAKE )

BRENT BUEHLER, being first duly sworn upon his oath, deposes  
and states as follows:

1. I am a resident of Salt Lake County, Utah and own a car  
and in the past have had an occasion to have automobile body  
repair work done on that automobile.

2. On one occasion in the latter part of December, 1987 I  
had my car towed to Chris' Body & Paint, Inc. after it had been  
involved in an accident. I informed State Farm people that my  
car was there and that I wanted it repaired at Chris' Body &  
Paint, Inc.

3. They (State Farm) told me that they refused to go to

Chris' Body & Paint, Inc. to do an estimate on the vehicle. They informed me that State Farm refused to do any business with Chris' Body & Paint, Inc.

4. That upon further inquiry as to reasons for this, they (State Farm) informed me that Chris' charges more for the work than it was worth, that they were unfair with their customers and that in the past Chris' Body & Paint, Inc. had cheated on repairs.

5. They (State Farm) informed me that Chris' Body & Paint, Inc. charged more for their work than other body shops in the Salt Lake valley and advised me to take it to another shop.

6. They had the car towed from Chris' Body & Paint, Inc. to some place where the car was stored for a period of time and it was later towed to another body shop for the repairs to be done.

7. Upon inquiring as to the per hour labor rate at Chris' Body & Paint, Inc. and at the shop in which the car was repaired, I discovered that the labor rate was the same at both places. Further, I discovered that Chris' Body & Paint, Inc. charged less on mechanical repairs per hour than the shop that State Farm referred me to and had my car repaired at.

8. That I ended up going to this other automobile repair shop at the insistence of State Farm and had my car repaired at this other shop.

9. That if I had been allowed to take my car to the shop of my preference, I would have had the repair work done at Chris' Body & Paint, Inc.

10. That due to the actions of State Farm, the car towed an

1000 COMMINGTON BOULEVARD  
OGDEN, UTAH 84401  
(801) 399-4191